SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/30/2002 CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES P. M. Espinoza
Deputy

LC 2001-000816

FILED: _____

STATE OF ARIZONA THOMAS A ZAWORSKI

v.

ALYSON TITCOMB DAVID M ROER

CHANDLER CITY-MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

CHANDLER CITY COURT

Cit. No. 01-P-855205; 01-P-855206

Charge: CT ONE: DUI-LIQUOR/DRUGS/VAPORS/COMBO

CT ONE: DUI W/BAC OF .10 OR MORE

DOB: 06/27/55

DOC: 03/18/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial court and the memoranda submitted by counsel.

Appellant asked this court to distinguish the Court of Appeals decision in State of ***Arizona ex rel. Pennartz v. Olcavage***[1] and claims that his situation must be distinguished from that case because Appellant was admitted as a patient at the Chandler Regional Hospital. The Appellant claims that a phlebotomist who is not supervised by a physician (as medical assistants are required under A.R.S. Section 32-1456(A)) is not a "qualified person within the meaning of A.R.S. Section 28-1388(A)" authorized to perform a blood draw to test for blood-alcohol content. Therefore, Appellant asserts that the trial judge erred in denying his Motion to Suppress the results of the blood draw.

First, this Court notes that A.R.S. Section 32-1456(A) is a regulatory statute governing medical assistants. That statute has no applicability to a forensic blood draw in a criminal case.[2]

Evidence was presented to the trial judge that a qualified individual performed the blood draw in this case. It is important to note that there is no question but that the blood draw was performed properly by someone who knew what (s)he was doing, who had experience, and that no physical harm was caused to the Appellant during the blood draw. The trial judge found that the phlebotomist was a qualified individual within the meaning of applicable law.[3]

Most importantly, A.R.S. Section 28-1388(A) provides in the second sentence of the section:

[1] 200 Ariz. 582, 30 P.3d 649 (App. 2001).
[2] State of Arizona ex rel. Pennartz v. Olcavage, 200 Ariz. 582, 30 P.3d 649 (App.2001).
[3] A.R.S. Section 28-1388(A); State v. Nihiser, 191 Ariz. 199, 953 P.2d 1252 (App. 1997).

> The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood-alcohol content determination made pursuant to this subsection.

Appellant seems to have ignored the second sentence of this statute as quoted above. Clearly, our legislature has provided that the qualifications of the individual or phlebotomist withdrawing the blood are not foundational prerequisites for the admissibility of the alcohol content of the blood. There is no statutory or constitutional right to have a medical assistant or phlebotomist supervised by a physician perform a blood draw under either Arizona law or Federal law.

Appellant's attempts to distinguish *State ex rel. Pennartz v. Olcavage*[4] must fail. That decision was not based or predicated upon the status of the Defendant in that case, but rather concentrated upon whether a phlebotomist must be supervised by a physician at the time of a blood draw in order to establish an appropriate foundation for that blood draw. The trial judge in this case correctly denied Appellant's motion.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Chandler City Court.

IT IS FURTHER ORDERED remanding this case back to the Chandler City Court for all further and future proceedings in this case.

[4] Supra.